

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING * MDL No. 2:18-mn-2873
FOAMS PRODUCTS LIABILITY *
LITIGATION * May 24, 2021

TRANSCRIPT OF FAIRNESS HEARING IN CAMPBELL VS. TYCO

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

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District of South Carolina

1 Monday, May 24, 2021

2 (WHEREUPON, court was called to order at 9:56 a.m.)

3 **THE COURT:** Okay, folks, good morning, everyone.
4 This is United States District Judge Richard Gergel for
5 those of you joining us remotely. This is the fairness
6 hearing in Campbell vs. Tyco, 2:19-422. And I'm going to
7 ask counsel who will be speaking here today to identify
8 themselves for the record, first from plaintiff's counsel.

9 **MR. NAPOLI:** Sure. Good morning, Your Honor.
10 Paul Napoli on behalf of the class.

11 **THE COURT:** Very good.

12 And for the defense?

13 **MR. PETROSINELLI:** Good morning, Your Honor.
14 Joe Petrosinelli for Tyco and Chemguard.

15 **THE COURT:** Okay. Now --

16 **MR. NAPOLI:** Excuse me, Your Honor. Besides
17 myself, Mr. Woofter will also be speaking.

18 **THE COURT:** Good. Good. Let me say we're all
19 navigating here in this strange pandemic world, mask, no
20 mask. And here is sort of my take on all of this.
21 Certainly, when you speaking, you can take off your mask
22 because I won't be able to hear you. And it is entirely
23 your own comfort about whether you wish to have it on or
24 off while you're sitting here. I'll let you make your own
25 decision yourself. I respect everybody's right to do

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1 that. And, of course, we're socially distanced here. And
2 Mr. Napoli has a plastic piece between he and his
3 co-counsel there. I'm not sure which one is designed to
4 protect from the other, but that's okay.

5 And let me explain because I know a number of
6 people are joining us who may not be familiar with this
7 process. A fairness hearing is to afford people who may
8 be impacted by a proposed class action to be heard and to
9 have their objections considered and weighed by the Court.

10 Excuse me, I'm going to ask folks who are on the
11 line to mute themselves please because it's going to
12 disrupt our proceeding.

13 So the purpose here is to afford everyone the
14 opportunity to be heard. It's an important right of
15 anyone impacted by class action. And the Court is not on
16 the side of anybody but on the side of justice. So as
17 they say down here, I don't have a dog in this fight.
18 Okay? All I'm trying to do is promote a fair, just, and
19 reasonable resolution of a case.

20 I thought it would be helpful at the beginning
21 just to allow, first, Mr. Napoli and then Mr. Petrosinelli
22 to summarize the settlement, to give us sort of a factual
23 overview of this. And then as we go through and I hear
24 from specific objectors -- I have, I don't know, five or
25 so folks who have indicated they wish to speak and I want

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1 to give them a chance to do that. If something comes up
2 that I think it would be helpful to hear from counsel, I
3 may ask. And I will say to counsel that to the extent
4 that there's something said that you feel like you want to
5 address, you ought to let me know that as well.

6 What I want to promote is a full and fair
7 exchange of ideas here and information so that at the end
8 of this we all have a better understanding of the
9 proposal. And whether we agree or disagree may be another
10 issue, but at least I think we want everyone to be well
11 informed.

12 It's a complicated settlement. Let's just --
13 you know, it's a -- it takes one in which I think perhaps
14 all of us today participating in this may learn something
15 as we go along here about the how the -- the actual
16 operation of this proposal.

17 Okay. With that, Mr. Napoli, the Court welcomes
18 your summary.

19 **MR. NAPOLI:** Sure. Again, good morning, Your
20 Honor. Where would you like me to be? At the podium?

21 **THE COURT:** Where you want to be. I'll tell you
22 what. I think you ought to stay at the table just to keep
23 separated from -- and you can stay -- I know when I often
24 would speak when I was a counsel, I always liked to have
25 something, you know, right in front of me. And it

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1 promotes a more -- less discipline when you're standing
2 away from your notes. So feel free to stay seated as you
3 speak.

4 **MR. NAPOLI:** Sure, Your Honor. I just would
5 like to begin by just acknowledging who is on video and
6 also to introduce the settlement administrator that was
7 appointed by your preliminary approval order of
8 January 25th, David Cohen.

9 **THE COURT:** Mr. Cohen, good to have you here
10 with us, sir.

11 **MR. COHEN:** Thank you, Judge.

12 **MR. NAPOLI:** And on Zoom we have Mr. Matt
13 Garretson whom you appointed as the notice -- class notice
14 administrator. So he's available to talk as well about
15 the notice issues.

16 Also on the phone is Mr. London, my colead. And
17 he'd be available to talk if the Court has any questions
18 on the broader issues of any impact on the MDL. And
19 Mr. Hunter Shkolnik, who is my partner and also the
20 additional class counsel along with Mr. Bilott, who is
21 advisory counsel and also class counsel, here in the
22 Campbell matter.

23 And, Your Honor, there are two motions on today
24 as you know, one for final approval of the Campbell class
25 and the second for approval of attorneys' fees and costs.

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1 Mr. Woofter, Daniel Woofter will be arguing to the extent
2 and answer questions along with myself and Mr. Bilott, but
3 him primarily on the final approval issues and any
4 technical, legal arguments that might arise. And I will
5 be arguing on the attorneys' fees and costs issue and
6 answer any questions that the Court may have.

7 And so to answer your question, Your Honor, with
8 regard to an overview of the Campbell case, the Campbell
9 case involves a class area that's defined by metes and
10 bounds in the settlement agreement and provided in the
11 final approval order just south of the Marinette facility,
12 which was originally the Ansul facility where the NRL
13 tested the original AFFF foam that was put together. And
14 it subsequently became a Tyco site. And then now it's
15 called the Johnson Controls site. It's been there for
16 about a hundred years. And they have a testing facility
17 behind their plant which they would go out and train and
18 use and test foam.

19 And as a result of that practice, there was
20 leaching into the groundwater, which ultimately made its
21 way down into the groundwater into the class area and
22 contaminated a number of private well owners. And those
23 private well owners are represented by Ms. Campbell, who
24 is in that class area, her and her husband.

25 And the class was brought on behalf of the class

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1 members seeking three forms of relief. One was property
2 damage for the demuntion in value of the properties
3 within that class area. Two, for medical monitoring for
4 those types of claims from exposure to PFAS that result in
5 the need to monitor your health for the diseases that we
6 believe are related to PFAS exposure, to go to the doctor,
7 to get the appropriate testing over the years, to have
8 early detection of those personal injuries. And the
9 personal injuries is the third claim for relief that we've
10 sought on a non-class basis for the Campbells and other
11 members in the community.

12 And so that -- this settlement here addresses
13 all three of those issues, resolves all three of those
14 issues, we believe, in a fair, adequate, and reasonable
15 way early on in the litigation. When I say early on,
16 early on in that these cases probably would not see the
17 ability to actually litigate and go to trial for quite
18 some time.

19 And so the structure of the class is property
20 damage claim of \$11 million; a claim exposure, what we
21 call medical monitoring, the defendants Tyco calls claims
22 exposure of \$4 million; and then a non-class fund of
23 \$2.5 million to address any claims that come as a result
24 of the notice or that are currently existing involving the
25 five enumerated personal injuries in the settlement

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1 agreement.

2 **THE COURT:** Mr. Napoli, let me ask you just in
3 terms of how these three elements of the settlement
4 interact with each other. If a person files a value
5 demunition claim and there's a formula for that based upon
6 the level of PFAS in their well, and they file an exposure
7 claim for residents of their home, they are required to
8 sign a general release; is that correct?

9 **MR. NAPOLI:** That is correct. The defendants
10 have required, and that's typical in most settlements
11 where they're going to pay money, that there be a release
12 for property and exposure and personal injury, yes.

13 **THE COURT:** Okay. So the individual who -- so
14 let's say a person does not have one of the five
15 conditions, kidney cancer, testicular cancer,
16 pregnancy-induced hypertension, ulcerative colitis, and
17 there's a fifth, um --

18 **MR. NAPOLI:** Thyroid disease.

19 **THE COURT:** Thyroid disease. Let's say someone
20 manifests one or more of those conditions, that claimant
21 can then apply to this personal injury fund for
22 compensation; is that right?

23 **MR. NAPOLI:** If they currently have one of those
24 injuries, they can apply to the personal injury fund for
25 compensation, yes, Your Honor.

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1 **THE COURT:** Okay. And if they do not have
2 one -- such a claim currently and they sign that general
3 release and later develop one of the five conditions, can
4 they bring an action at that point?

5 **MR. NAPOLI:** If they sign a general release and
6 have those injuries currently and don't submit for
7 personal injury --

8 **THE COURT:** No, that's not my question.

9 **MR. NAPOLI:** I was going to finish. I'm sorry,
10 Your Honor.

11 **THE COURT:** Yes.

12 **MR. NAPOLI:** They would have released those
13 claims. If they have opted in, they will have released
14 those claims is my understanding.

15 **THE COURT:** Yes, they will. That's the release.
16 It's a general release.

17 **MR. NAPOLI:** Unless -- unless, Your Honor,
18 they're below the age of 18 and a child, they would not
19 be --

20 **THE COURT:** Unless the parent sought court
21 approval -- I mean, part of the exposure claim is you
22 could claim it for a child who lived in the place. But
23 you'd have to have court approval for a minor settlement.
24 And if the parent was authorized to sign the release, they
25 could sign the general release, but that would require a

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1 second court approval. Is that fair? I think that's
2 right.

3 So the answer is -- so if -- let's say someone's
4 part of the class and they say I don't want to sign that
5 general release, but they have not opted out. And within
6 the time period provided to submitting a property claim,
7 they don't submit the claim because they don't want to
8 lose their latent -- their potential for a latent personal
9 injury claim, would that person then lose their right to
10 pursue property demunition?

11 **MR. NAPOLI:** Yes, Your Honor.

12 **THE COURT:** Okay. And the personal injury
13 class, again, if somebody opts out, they're not subject to
14 the fund limiting them to 2.5 million, correct?

15 **MR. NAPOLI:** That's correct.

16 **THE COURT:** But if they do submit a claim under
17 the settlement agreement, the maximum exposure that the
18 defendant would have for any such claim would be
19 \$2.5 million for all claims; is that correct?

20 **MR. NAPOLI:** Correct.

21 **THE COURT:** And Mr. Napoli, you've got some
22 experience with this one. What's a toxic tort wrongful
23 death cancer case worth if it can be proven? Great
24 variability, obviously, on age and all of that.

25 **MR. NAPOLI:** Well, it depends. And I can say

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1 from my experience, you know, at least in this situation
2 in Marinette, we have canvassed the area multiple times,
3 both myself and Mr. Bilott. We've also looked at the
4 likely incidents of a lot of these cancers. So we have a
5 good feel from these 200-plus homes as to whether or not
6 there are these personal injury claims and what the
7 likelihood of there are going to be. And it's been
8 consistent with what claim -- the number of claim forms
9 that are filed.

10 And I have resolved some personal injury cases
11 in the past. And it's going to depend on looking at each
12 home, whether or not there's exposure at that home.
13 Because there are other causes of some of these injuries.

14 **THE COURT:** Sure. This is not a unique -- these
15 conditions are not unique to PFAS exposure. The question,
16 though, I have is -- listen, the lawyers know much more
17 than I do about the potential merit of any of these
18 claims. Y'all have given me just really the most
19 superficial exposure over -- we've mostly been doing
20 discovery related matters and not doing the underlying
21 merits. So I don't know if you can prove or not prove
22 causation. Those are always challenging in any toxic tort
23 case or any product defect case. You always -- you've got
24 to prove -- when you've got a disease, you've got to prove
25 causation.

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1 I'm going to confess to you, Mr. Napoli, I'm a
2 little perplexed why we have the personal injury non-class
3 in any way connected to this settlement. I can understand
4 why the parties might want to negotiate a personal injury
5 settlement. I get that completely. And I can understand
6 why the defendant would want to foreclose future unknown
7 liabilities. Mr. Petrosinelli wouldn't be doing his job
8 without trying to do that.

9 But the question in my mind is are we -- are we
10 actually doing a shadow class on the personal injury
11 claims? That is, we couldn't class the personal injury
12 claims predominance, we couldn't get through Rule 23 and
13 that's why no one's trying that. That's well known. So
14 what we're really doing is, if you agree to accept a
15 property demunition claim as a class member, you are
16 required to agree to the limitations for your personal
17 injury claims set forth in the settlement agreement. Is
18 that fair?

19 **MR. NAPOLI:** Absolutely, Your Honor, yes.

20 **THE COURT:** And I think that's essentially a
21 class. I think you're classing the personal injury
22 claims. That worries me.

23 I think the company's proposal concerning the
24 property demunition and the exposure claims are fairly
25 reasonable and imaginative in some ways. I think of how

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1 you deal with medical monitoring. You're compensating
2 people for the risk of exposure. You're basically giving
3 them the money to medically monitor.

4 I just want to tell you up front I've got some
5 concerns about the connection to the personal jury claim.
6 And from the beginning, I've been mystified why a
7 non-class fund is connected to a class settlement. And
8 the answer I think is, and you're confirming this to me,
9 Mr. Napoli, is because it is essentially classed. It is.
10 It's the price of getting -- participating in this
11 settlement is you've got to -- as a member of the class
12 you've got to give up in part your rights for personal
13 injury. And you're limited to a fund that is finite. And
14 it may be -- it may be that 2.5 million overcompensates
15 people. I don't know. I have no idea about that.

16 But the question is why not separate them? That
17 is, why not do the two class matters independently? And
18 then advise people in the area, we would -- we're, number
19 one, open for business to negotiate any current cancer
20 claims. Sounds like y'all are already doing that?

21 **MR. NAPOLI:** Correct.

22 **THE COURT:** And for latent claims, we'll pay you
23 X dollars if you want to run the risk. But say it up
24 front and don't condition it on anything else. It's just
25 an individual decision. And the good folks in Wisconsin,

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1 this Wisconsin community, who want to be paid now for the
2 risk or want to wait would be their call. I just put that
3 out there because that --

4 **MR. NAPOLI:** Sure.

5 **THE COURT:** -- some variation of that is
6 throughout many of these objections, not maybe articulated
7 quite as specifically as I've raised it but which I think
8 raises a concern. I found the -- I've got to confess, I
9 don't think I actually read all 152 of them. I skimmed
10 some after awhile because a lot of them had similarities
11 and some of them looked like they were maybe prepared by
12 the same person. That's okay.

13 But I did get -- I did read everyone who is
14 speaking here very closely. And I read a lot of the
15 others. And I feel like I've -- I grasp the objections.
16 Some I think you're going to have some very good answers
17 for. And some I think you're -- you go to this concern
18 about -- and it's articulated in different ways.

19 But, you know, I've always been hesitant, very
20 hesitant when lawyers come to me about settlements to try
21 to second guess their judgment because they know the case
22 and I don't know the case. But I don't normally have a
23 situation where the client stands up and says -- and
24 that's what's happening here, it's at least 150 people
25 have stood up and said we don't think this is fair.

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1 I've been doing this work for a lot of years,
2 both as a judge for over a decade and as a lawyer, I don't
3 ever remember this many -- y'all are more familiar in this
4 world. Maybe having this number of objections is routine.
5 It's not in my court. It's not been in my court. And
6 I've had very large settlements in which I've presided
7 over, class settlements.

8 So not to say all their objections are valid
9 because I think many of them y'all have very good answers
10 for them. But I wanted from the outset to share with you
11 my concern not with maybe in the end folks consciously
12 knowingly agreeing to release personal injury claims
13 separate from a class settlement and maybe would get
14 exactly the same result, but I'm concerned with the
15 structure here.

16 And -- okay. With that --

17 **MR. WOOFER:** If I may, Your Honor, just to
18 quickly address?

19 **THE COURT:** Yes. Can you speak a little louder?

20 **MR. WOOFER:** I think with regard to the release
21 and it's -- it is not -- and defendants can confirm if
22 this is the case in this situation as well. It wouldn't
23 be uncommon to release such claims even if there weren't a
24 separate fund for non-class personal injury claims if it
25 were just funds for property damage, it wouldn't be

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1 uncommon to include such a broad release. So in some ways
2 it's more --

3 **THE COURT:** Yeah. I've got to say, if -- that
4 may be true. I am aware that some people are very willing
5 to sign general releases. But this is pronounced to be
6 just a property claim -- a class is frankly for property,
7 frankly for medical monitoring described here as exposure
8 risk.

9 And it's not -- we couldn't class personal
10 injury. So the effect here -- and I agree with you. You
11 know, I was a litigator. I did hundreds of releases,
12 sometimes on Mr. Petrosinelli's side and sometimes on the
13 other side. Here in South Carolina we do both sides. And
14 I was always very conscious of the scope of that release.
15 And when you can't class something and then you put a
16 general release, you're classing it. That's basically the
17 effect here, though I'm fully familiar with the process.

18 You get an automobile liability case and people
19 will often give a general release. They want to make sure
20 you're not suing some party associated with them. But
21 it's not uncommon in those cases where someone says I'll
22 give you a release and anybody affiliated with you, but
23 I'm not giving the doctor or the hospital who treated me a
24 release because that's a completely separate case and
25 there's no consideration.

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1 So I do think you put -- Mr. Woofter, you're
2 putting your finger on the problem here is the general
3 release with a limited class. That's the problem is
4 the -- they don't match. And I don't fault the defendant
5 for wanting a general release. If I were in their shoes,
6 I'd be doing exactly the same thing. But, you know, I've
7 got to look for the best interests of the class here.

8 **MR. NAPOLI:** Your Honor, if I may just talk for
9 a second about the structure? And while it's true, there
10 are a lot of objections -- and I've been practicing for a
11 long time, too, and held a lot of classes with a lot more
12 people with a lot less objections. And so, you know, it
13 also concerns me. But when you look at the objections,
14 the major objection that we're talking about is the issue
15 of piping the clean water --

16 **THE COURT:** Yeah, let's not go off on that right
17 now.

18 **MR. NAPOLI:** If I may finish, Your Honor?

19 **THE COURT:** Go ahead. But I'm just saying that
20 may be an issue which y'all have a point about. We'll
21 talk about that in a minute because it's a core issue on
22 property diminishment value. That I understand. And I
23 don't want to interrupt you, Mr. Napoli, but I want to say
24 I don't want to chase that rabbit down because I think
25 y'all have a point there. It is the connecting to the

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1 personal injury that concerns me.

2 MR. NAPOLI: So there are a few objections as to
3 personal jury and certainly they can opt out. But I
4 wanted the Court to be aware though as well that we have
5 nine claims for personal injury that have been submitted.
6 And Mr. Garretson is, as I said, on the Zoom and he can
7 give the statistics as to the notice. And there are 320
8 claims for property damage that are submitted.

9 And I know very well and Mr. Woofter is from
10 Goldstein and Russell. And I've argued with his partner
11 at the Supreme Court on issues involving jurisdiction and
12 class. So I understand the issues very well. And there's
13 certainly a balance.

14 Here there is a clear opt out. If somebody is
15 concerned about a future injury and they do not want to
16 waive it, they do not have to accept the property claim.
17 They do not have to accept the monitoring. And they can
18 opt out and pursue that claim. The fact is no other cases
19 in four years have been filed in this jurisdiction. Only
20 the Campbell case has been filed and the Goldsmith case,
21 which was a personal injury case, which was resolved.

22 So these class members -- and in negotiating the
23 class with Mr. Petrosinelli, I understand that there's a
24 balance between whether or not to release a personal
25 injury claim. When you look at the market here in

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1 Marinette, there was a four percent drop in property
2 values. Here in this class people are going to get a
3 minimum of 60 percent of their property value. So there
4 was a balance that had to be made by me as the lawyer --

5 **THE COURT:** But -- but -- but you're going back,
6 Mr. Napoli, on the issue, which I agree with you on, which
7 is that this is, I think, a reasonable property
8 settlement. It is the connecting of it and the way it is
9 done that concerns me.

10 It may be that if Tyco simply said we're
11 prepared, separate from this, to settle every personal
12 injury claim that anyone wants to assert, and if you're
13 willing to waive your latent claims, we'll pay you a
14 certain amount of money for that. I think that is a
15 perfectly reasonable separate arrangement.

16 It is coupling this with the class that concerns
17 me, not the end result. And it may well be that the
18 people will line up and say, give me X dollars, I'll give
19 it up, or they will just hold on to their right; that will
20 be their choice.

21 But if the answer was as long as people can opt
22 out, it doesn't matter what the settlement is, then we
23 wouldn't have a fairness hearing, we would just have an
24 opt out procedure. I think we all recognize that many
25 people will be affected who don't have the means to bring

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1 a lawsuit at this point. But if they were to develop one
2 of these five conditions, they might well have one. And
3 under the discovery rule, their statute of limitations
4 wouldn't be -- would not be -- would not have run.

5 Now --

6 **MR. NAPOLI:** May I say, Your Honor, I think the
7 structure as exists handles that. So if somebody does not
8 opt out, does not participate, and has a latent injury
9 that develops ten years from now, they can bring that.

10 **THE COURT:** Absolutely. But they have to give
11 up their right to pursue a property claim to exercise that
12 right.

13 **MR. NAPOLI:** No, they can file a property
14 claim --

15 **THE COURT:** No, if they file a property claim,
16 they then go -- then they have to give a general release.

17 **MR. NAPOLI:** When I say -- they can file a
18 property case.

19 **THE COURT:** Yeah, but nobody's going to do that
20 because of the cost of the lawsuit. I mean, Mr. Napoli,
21 you have done, and I think the folks up there don't
22 appreciate the level of effort of your law firm and these
23 other lawyers in pursuing this case. It is enormous. It
24 is just amazing how much effort it has taken. And it
25 highlights the value of MDLs and in some cases class

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1 actions to bring justice to people who would otherwise not
2 have a remedy.

3 But, you know, the appellate courts have warned
4 us about not overdoing these class actions and prejudicing
5 the rights of people. So I'm trying to find a way here to
6 navigate this. And so I highlight to you again -- and you
7 say that only a few people have raised the coupling of
8 these issues, but they've said it in different ways. They
9 say the fund isn't adequate. There are all these
10 different issues. The PI fund isn't adequate. But there
11 really, when you get down to it, it's all this issue, why
12 is personal injury in the case?

13 Well, Mr. Petrosinelli, before I proceed to hear
14 from folks, is there anything else you wish to add?

15 **MR. PETROSINELLI:** If I can be heard, Your
16 Honor?

17 **THE COURT:** Yes.

18 **MR. PETROSINELLI:** I think Your Honor might
19 imagine -- and I've represented plaintiffs and defendants,
20 as well. They do that in DC some, too, not as commonly
21 maybe as South Carolina.

22 But on this, you might imagine, it's not a very
23 attractive proposition to a corporation to pay what I
24 think for these claims are substantial funds for property
25 and exposure claims and then have the next day people

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1 turning around and suing you for personal injury. It was
2 really at a crucial point of this settlement.

3 And I just wanted to give Your Honor the
4 perspective on why we did it that way and the amount. The
5 amount obviously was negotiated. But I think there's
6 really two things. One is, as Mr. Napoli said, we just
7 didn't think there were going to be that many personal
8 injury claims. And I think that's borne out by the claims
9 process. You just heard Mr. Napoli say there's been only
10 nine, not including the Campbells, I guess.

11 And we thought it would be good to mirror the
12 settlement in the way the Campbells themselves brought the
13 complaint; that is, they have class claims but they have
14 their own personal injury claims that they included in the
15 complaint. So we thought there weren't going to be that
16 many claims.

17 And the second thing we thought, and this gets
18 to the choice; and that is, that the testing and the
19 wells, which I know we'll talk about, reflects that
20 there's very, very few people that have any PFAS in their
21 wells. Most of them have zero and some others have below
22 any regulatory limit. There's very few people that have
23 levels above any regulatory minimum. And the thought was
24 --

25 **THE COURT:** How many -- has Wisconsin adopted a

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1 level lower than the federal guidelines?

2 MR. PETROSINELLI: They have not adopted it but
3 it's below 20 parts per trillion.

4 THE COURT: Which is a little bit between some.

5 MR. PETROSINELLI: So what I'm saying is, just
6 to give you an idea of the data, there's been about 171
7 wells tested. 140 of the 171 were zero or below 20 parts
8 per trillion, that's 81 percent of the wells tested to
9 date have zero, most of them are zero. 111 are zero. And
10 so we thought that if someone were making a choice, should
11 I participate in this settlement and take money for
12 property damage and exposure and I don't have a personal
13 injury right now, so I can't apply for the personal injury
14 fund, so I have to decide am I going to take this money
15 for property damage and exposure, or am I thinking, gosh,
16 what if I develop one of these injuries? Most folks are
17 going to say to themselves, well, if I have zero in my
18 well --

19 THE COURT: It's a pretty good bet, you might
20 say. And the company could well say we're going to pay
21 this amount of money and we don't think your claim is
22 worth more than that. And if you want to bring a personal
23 injury suit, have at it. We don't think the risk is very
24 great proving it. Even if you developed it that you could
25 prove it.

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1 You know, I get your reasoning. I really do. I
2 get where everybody is coming from. It's just linking
3 these decisions is doing something that I don't think we
4 can do, which is to class the personal injury claim. And
5 I think we're effectively doing that.

6 And so I think this is fixable. I really do. I
7 know the companies said we'd like to lump them all
8 together and get rid of all these future prospective
9 claims. I get that. I don't fault them for wanting to do
10 that. But linking it to a class action is a problem.
11 That's the issue.

12 And so, you know, in the end, maybe what
13 actually the company pays and what happens might be very
14 similar to what you've proposed but you're not doing a
15 shadow class doing it. And it's just decoupling those
16 things.

17 And you're right, Mr. Petrosinelli, many people
18 may say, I have zero in my well. And if I'm getting X
19 dollars, I'm probably being overpaid. Of course, people
20 can have PFAS exposure more than just in their wells. I
21 mean, they could potentially if it's in the community, it
22 can be in the groundwater, somebody mentioned their
23 basement. I think these are tough claims. I would warn
24 anybody opting out, and I say it right now, you better
25 have somebody ready to go if you're going to opt out

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1 because you don't know how much work's been done by these
2 lawyers just to get where they are.

3 How many documents now, Mr. Napoli? 4 million
4 documents or something already?

5 **MR. NAPOLI:** There's way more than that that the
6 plaintiffs have reviewed.

7 **THE COURT:** It's amazing what's happened here
8 and the work done. And the decision to opt out is a very
9 serious decision because I think the likelihood you can
10 get another lawyer who could remotely approach the
11 competence of these lawyers to litigate it would be a
12 stretch.

13 But saying that, how do you dispose of rights of
14 people for future injury? And I understand that what Tyco
15 says is we'd like to have an absolute ceiling on our
16 exposure. Who wouldn't? But doing it by a class action
17 is problematic. And if you don't -- you're not going to
18 be able to cap it if you don't have a class. You're just
19 not going to -- you can't cap it. And that's the benefit
20 of the class is that you're able to cap the exposure. You
21 know, there's a finite fund.

22 Well, let me proceed to hear from our objectors.
23 And I believe the Baur's are actually in my courtroom. Is
24 that correct?

25 **MR. BAUR:** That's correct.

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1 **THE COURT:** Welcome, Mr. and Mrs. Baur. I'd be
2 glad to hear from you. Are you comfortable saying where
3 you are?

4 **MR. BAUR:** Yes.

5 **THE COURT:** Very good. I'd be glad to hear -- I
6 want to make sure. Are we picking them up on a
7 microphone? Because I know people that are listening are
8 not going to --

9 **THE COURT REPORTER:** No, sir.

10 **THE COURT:** Crystal, is there a remote mic or
11 anything I can hand the folks? I don't want them to have
12 to come to the podium if they don't have to.

13 **THE CLERK:** I don't think so.

14 **THE COURT:** Mr. Baur, why don't you just come to
15 the podium here, sir.

16 **THE CLERK:** And I need to unlock the phone line
17 to allow one person to join.

18 **THE COURT:** Yes, take your time.

19 **THE CLERK:** When they join, I'll lock it back.

20 **THE COURT:** Okay. I think we're okay.

21 Mr. Baur, welcome to Charleston, South Carolina.

22 **MR. BAUR:** Thank you.

23 **THE COURT:** I hope -- did you drive or fly?

24 **MR. BAUR:** Fly.

25 **THE COURT:** Okay. That's a little better than

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1 driving. Okay. So share with me your concerns, sir.

2 MR. BAUR: I shall. Again, my name is Jim Baur.
3 My wife Cindy and I have lived in the Town of Peshtigo
4 since 1981. The source of information that I have
5 regularly comes from the Wisconsin Department of Natural
6 Resources. They have held a series of listening sessions
7 on this subject. They have documented their listening
8 sessions with slides of their presentation. And my
9 conclusion is the future spread of PFAS in our groundwater
10 is not known.

11 In the Wisconsin DNR listening sessions slides
12 dated January 20th of this year, '21, Tyco provides A Path
13 To PFAS Solution. Slide 28 is titled Where Is The PFAS?
14 It shows concentrations greater than 100,000 parts per
15 trillion moving predominantly to the east. You can only
16 scale the size of this off the slides provided but it
17 seems to be a very large area.

18 The Wisconsin DNR listening session dated
19 March 17th of this year provides Tyco's information on a
20 proposed groundwater extraction system they term Yes.
21 Slide 20 titled Excerpt From Appendix B Of JCI Remedial
22 Action Plan Report shows the PFAS groundwater
23 concentration and plume size for the current year and what
24 they propose it to be after treatment for 10, 20, and 30
25 years. For some reason the plume size now exceeds 16,000

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1 parts per trillion versus 100,000 parts per trillion. The
2 size is approximately equal to the area of the Tyco Fire
3 Technical Center property.

4 In one study, this plume is moving to the east.
5 Yet, in the other study, they assume it's stationary so
6 they can treat it. It's not credible to a layperson. I'm
7 an engineer, but it's not credible to me as a layperson
8 that a highly concentrated plume area will not migrate and
9 cause further damage to the wells, wildlife, and fish.

10 **THE COURT:** Mr. Baur, in your objection, I
11 believe you also stated you were opting out of the
12 settlement; is that correct?

13 **MR. BAUR:** We did opt out.

14 **THE COURT:** So you're among those who have
15 looked at this and said, listen, I'm just going to take my
16 chances because I'm worried about future risk.

17 **MR. BAUR:** Correct. And just to clarify, my
18 wife will clarify it better, but we had owned a property
19 which we no longer own in the settlement area within the
20 specified time period.

21 **THE COURT:** But you would not receive under the
22 settlement your property -- any property compensation,
23 you'd have to pursue that separately. You understand
24 that?

25 **MR. BAUR:** Yes.

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1 **THE COURT:** Well, tell me, if you're opting out
2 and you seem well informed. You've attended meetings.
3 You're an engineer by training, so you have some
4 understanding of this type of data. Why wouldn't just,
5 you know -- why would those who wish not to participate
6 opting out not be the solution so people who want to do
7 this deal would have the privilege of doing it?

8 **MR. BAUR:** I don't wish to prohibit anybody from
9 taking the promised damage allotment. My concern is not
10 so much for us, it's for our young women and their
11 children, our grandchildren. We have this huge plume of
12 contaminated area. A logical person would not believe
13 it's just going to stay there for the next 30 years. A
14 logical person would believe that there's some level of
15 treatment that this extraction system can bring it down
16 to. However, the lower the density gets of the
17 contaminant, the more water you need to treat and treat
18 and treat to get more product help.

19 **THE COURT:** Now there is -- are you aware that
20 recently the Wisconsin DNR approved the remediation plan
21 of Tyco?

22 **MR. BAUR:** Yes, I am aware they approved that.

23 **THE COURT:** What's the significance of any of
24 that in regard to your concerns?

25 **MR. BAUR:** Well, I think it's the right path

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1 forward. But the concern is it takes -- the treatment
2 cycles off in 30 years. So what is happening --

3 **THE COURT:** Is there any --

4 (Indiscernible crosstalk.)

5 **MR. BAUR:** What's happening to my grandchildren
6 during that 30-year span?

7 **THE COURT:** Well, of course, your grandchildren
8 aren't being released. They would still potentially have
9 claims, would they not, under the settlement?

10 **MR. BAUR:** Well, I just want to make sure that
11 everybody understands that.

12 **THE COURT:** Yeah. The women you were talking
13 about potentially would have their -- I mean, if they
14 don't opt out of the class, they would lose their property
15 claims. The children would not because you can't -- the
16 child's --

17 **MR. BAUR:** Right.

18 **THE COURT:** You can't extinguish the right of a
19 child without court approval.

20 **MR. BAUR:** My concern is in listening to the
21 class counsel speak in their Zoom meeting session, I don't
22 believe that they offered people an assessment of what the
23 risk of the various cancers are, what the probability is,
24 and what the cost is of treating those.

25 **THE COURT:** Yeah, and let me say this. Some of

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1 this is they asked you, honestly, they don't know because
2 a lot of this is unknown. Just like we've all found on
3 COVID, how you do things -- we're just beyond knowledge to
4 be able to really fully assess this.

5 But you heard a little bit from Mr. Petrosinelli
6 that 81 percent of the people had less than 20 parts per
7 trillion in their wells. Now, you mentioned to me --

8 **MR. BAUR:** Your Honor, that's to date. To date.
9 What is it going to be ten years from now?

10 **THE COURT:** It's a fair question.

11 **MR. BAUR:** And Tyco has not taken the
12 responsibility to take a testing of wells over a long
13 period. They haven't been involved with this over a long
14 period. How is that number changing?

15 **THE COURT:** Yeah, I mean, the -- I mean, I noted
16 as you did that we're talking about a 30-year remediation
17 plan with the state, which is a substantial, you know,
18 engagement that Tyco is going to have with the community
19 just on this issue. But I did note that DNR said it
20 doesn't really directly involve the treatment of any
21 wells; that the wells themselves are not part of -- the
22 treatment of private wells is not part of this settlement
23 with the state.

24 **MR. BAUR:** Correct.

25 **THE COURT:** So --

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1 **MR. BAUR:** But my treatment system that I may
2 choose to put on my private well is independent of the
3 discussion of what happens to this large plume of
4 contaminated water over the next 30 years.

5 **THE COURT:** So let me understand what you -- and
6 I'll see if the lawyers have some response as well to
7 this. This plume with 16,000 parts per trillion, where is
8 that? Where is that physically?

9 **MR. BAUR:** That is physically under the Tyco
10 fire training facility. It is under their property and
11 off to the east of their property.

12 **THE COURT:** How far off?

13 **MR. BAUR:** It overlaps. It's about two-thirds
14 on, maybe a third off.

15 **THE COURT:** How far does this plume go distance
16 wise? Are we talking a mile, a block? I mean, how --
17 quarter of a mile?

18 **MR. BAUR:** My best guesstimate from looking at
19 the slides and, you know, the size of the treatment plant,
20 my best guess is 1 to 200 acres.

21 **THE COURT:** And are there private wells within
22 that range or are they outside of that?

23 **MR. BAUR:** No, outside of that range.

24 **THE COURT:** Okay.

25 **MR. BAUR:** My concern is this stuff isn't going

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1 to stay stable. It's not a piece of gold sitting under
2 the ground. It's mobile.

3 **THE COURT:** So if I were to approve this would
4 you advise people to opt out as you have? Would that be
5 the proposal?

6 **MR. BAUR:** If somebody were to ask me, and they
7 did have children or grandchildren living with them, I
8 would advise them to opt out.

9 **THE COURT:** Now, let me ask you this. If you
10 did not have as a condition of applying for property
11 damage that you had to agree to waive, release your future
12 disease case claim, would you file yourself a property
13 claim if that was the only issue for exposure and for
14 diminished value? Would you apply for that yourself?

15 **MR. BAUR:** I don't understand, sir. If it were
16 only for the property, I -- I would not have an issue with
17 that.

18 **THE COURT:** I mean, would you -- my question is
19 this, is the fact that you're trying to preserve your
20 future claim causing you not to apply for your property
21 diminishment claim under the class action?

22 **MR. BAUR:** Well, please understand, we no longer
23 own the property in the settlement area.

24 **THE COURT:** Mr. Petrosinelli, it still applies,
25 doesn't it?

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1 **MR. PETROSINELLI:** Yes, Your Honor.

2 **THE COURT:** Yeah. So you would have a right to
3 do that. But if you do it, you give up your latent
4 defect -- your latent disease claim.

5 **MR. BAUR:** Right.

6 **THE COURT:** And I'm just asking you, if you
7 didn't have that condition, would you pursue -- if you had
8 a right to property diminishment, would you pursue it?

9 **MR. BAUR:** Honestly, Your Honor, my wife has
10 been much more involved in that aspect. I'll let her
11 speak to that.

12 **THE COURT:** Okay. Okay. Well, thank you, sir.
13 I really appreciate you coming. If your wife wants to
14 step forward and have anything else to add, I'd be glad to
15 hear from her.

16 **THE COURT REPORTER:** Could you ask them to mute?
17 Somebody on the line is --

18 **THE COURT:** Could I ask on the line somebody
19 needs to mute. We're hearing people and it's distracting
20 in the courtroom.

21 Yes, ma'am, Mrs. Baur? Glad to hear from you.

22 **MS. BAUR:** I'm Cindy Baur. One thing Jim had,
23 when we were listening to -- or at a DNR listening
24 session, a friend of ours was with us and he's 70 years
25 old. And they nudged each other and said, So, what's a

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1 70-year-old testicle worth? And he said -- you know, they
2 chuckled about it. However, it's not so funny for truly
3 in the big picture of things because there were kids in
4 high school with testicular cancer. Marinette is a cancer
5 hot spot. And so it's not so funny, although in their
6 context --

7 **THE COURT:** Furthermore, many people with
8 testicular or kidney cancer aren't so lucky to have it
9 contained to a single organ.

10 **MS. BAUR:** Yes. So I'll start on mine.

11 I'm Cindy Baur. And I'm a resident and elected
12 supervisor of the Town of Peshtigo. There are few things
13 in life we need to survive. I need food, water, and
14 faith. JCI has poisoned our water with a forever chemical
15 called PFAS. It is measured in parts per trillion. Over
16 20 parts per trillion is considered a health risk. The 20
17 parts per trillion is the equivalent of one drop of water
18 in an Olympic-sized swimming pool.

19 **THE COURT:** You must have been hearing my
20 argument. I said that early in the case and everybody had
21 to acknowledge that that was probably true.

22 **MS. BAUR:** Yes.

23 **THE COURT:** It's very small numbers. We're
24 talking about very small numbers.

25 **MS. BAUR:** It is very small numbers. However,

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1 for children, infants, they say even one is too much. So
2 as a forever chemical, it stays in your body and your
3 water. You can't see it and wouldn't know it was in your
4 water. But JCI released it into ours.

5 PFAS is linked to five conditions including
6 cancer and more illnesses not yet confirmed. It has been
7 spread on our farmlands and goes into the food we grow and
8 the animals we feed. It's our wildlife and our fish.
9 It's in our bay water, which is part of Lake Michigan.

10 It continues to spread and will still be
11 spreading after 30 years of the JCI proposed filtering.
12 The people in the Town of Peshtigo all had to either drill
13 wells or sand points to receive water. So our water comes
14 from groundwater and not a municipal source.

15 PFAS has spread well beyond the settlement area.
16 And just to be clear, there was an initial test area that
17 the Campbell suit came. Then it was expanded to a
18 settlement area that included a larger area. Although JCI
19 never admitted to their PFAS being in that expanded area,
20 it is part of the settlement area. I will not live long
21 enough to see the PFAS out of our water but will only live
22 to see the spread continue. This settlement is not nearly
23 enough. We deserve clean water.

24 To this day, class counsel has not contacted me.
25 I read the settlement twice completely before I realized

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1 we were even part of it. We have opted out of this
2 because it leaves us with poisoned water, food we can grow
3 and not eat, and a lack of faith that class counsel and
4 JCI will do what's right for the people of the Town of
5 Peshtigo.

6 **THE COURT:** Let me ask you this. There is
7 contamination that we can't turn the clock back and stop.
8 So we've got to deal with reality.

9 **MS. BAUR:** Yes.

10 **THE COURT:** And we're dealing with a situation
11 where it is enormously difficult to litigate one of these
12 cases.

13 **MS. BAUR:** Yes.

14 **THE COURT:** And, you know, I know that sitting
15 there in the community where your water has been affected
16 by this is -- gives you a certain perspective that I
17 respect. There is another perspective which also I've got
18 to consider, and that is that these cases are so expensive
19 to litigate. If we don't figure some way in which we can
20 efficiently settle them, many people, though they may have
21 claims, will never be able to get a penny. It's just
22 too -- what lawyer would take this on on a single case or
23 even a group of cases? The lawyers here are handling
24 thousands of cases. And only then does it become
25 economically reasonable to even litigate a claim.

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1 So one of the realities here is for the folks in
2 your community is they may opt out, which they have every
3 right to do if a settlement is approved. But the reality
4 is there may not be a practical way to litigate their
5 claims. That is the concern I have, is what is the -- on
6 the practical side, everything you say I can fully
7 understand and appreciate. But if you have no one to
8 litigate your claim, and if somebody, that young mother or
9 child develops a condition, if it's serious enough,
10 obviously, perhaps that might be a lawsuit. But the more
11 common lawsuit coming out of, say, pregnancy-induced
12 hypertension, which may be transient, the only way it was
13 ever going to be compensated is probably through some kind
14 of settlement, some kind of large settlement.

15 I'm just saying that that's just a reality that
16 concerns me, taking everything you and others have said,
17 legitimate concerns that you have is -- and you're taking
18 a course which makes plenty of sense to me. You're opting
19 out. I'm, frankly, more concerned about the people in the
20 class and their rights to be fairly adjudicated. Because
21 I can feel confident that you and Mr. Baur are going to be
22 okay because you've made the decision to opt out.

23 **MS. BAUR:** Your Honor, we opted out because we
24 have -- the property that we no longer own and was in the
25 test area is -- we sold long enough ago that it is -- we

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1 have no effects over it. However, we own a property that
2 is two houses outside of the settlement area that's
3 contaminated. We don't live in that house. But we own
4 another property that we do live in that when this plume
5 spreads we could be contaminated. If we give up our
6 rights to this now, we have no rights for the people that
7 live in the other house or for ourselves.

8 **THE COURT:** Well, that's my concern about the
9 general release, that there perhaps is a path here. I
10 mean, you say -- I don't know when you sold the property
11 that was within the test area. But if I understand the
12 settlement, you may be eligible for some compensation. I
13 don't know. But the price of that is you have to give up
14 your right for future claims.

15 **MS. BAUR:** Yes.

16 **THE COURT:** And the concern I have is the
17 connection of those two. You might, you know, -- it
18 sounds like to me, you and your husband wouldn't on a bet
19 give up your right because you're worried about the
20 future. That's a reasonable economic decision on your
21 part.

22 But the question is is the settlement for people
23 who would choose -- who do not opt out, is the settlement
24 fair, reasonable, and adequate? That's what I've got to
25 ask. Do you see what I'm saying?

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1 **MS. BAUR:** Yes. I also represent the people in
2 the Town of Peshtigo through my position on the town
3 board. And this is very concerning to a lot of people.
4 And this is -- that's why we made the trip here today.

5 **THE COURT:** I appreciate that you came. Thank
6 you.

7 **MS. BAUR:** And I'm very grateful that you are
8 hearing us as the residents there and our concerns.
9 It's -- it means a lot to us. Thank you, Your Honor.

10 **THE COURT:** Thank you very much. Thank you,
11 Mrs. Baur.

12 Okay. Mr. Petrosinelli, if I could just ask you
13 this. Talk to me a little bit about the movement of the
14 plume and sort of the companies -- and I know y'all have
15 hired engineers and so forth and tried to estimate some --
16 you know, how quickly it will spread and how it will
17 spread and so forth. What can you share with me about
18 that?

19 **MR. PETROSINELLI:** Yes, thank you, Your Honor.
20 I'm glad you asked because I was going to pipe up. I
21 think one thing that's crucial to understand is that this
22 GET System, groundwater treatment system that DNR has just
23 approved, not only does it extract the groundwater, clean
24 it and put it back in the environment of PFAS, but it
25 hydro-geologically stops the spread of the plume. That's

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1 the key, that it's not just a treatment system in the
2 sense of treating the groundwater that does have PFAS in
3 it but it stops the spread of the plume. So in terms of a
4 future issue, that is what takes care of the
5 plume-spreading issue.

6 The second thing to realize is that Tyco did
7 fire foam testing at this facility for 40 years. It
8 stopped in 2019, outdoor testing. And so in terms of
9 thinking about the future, whatever foam got in the
10 ground -- in the groundwater over the 40 years prior to
11 2019, it would have already -- whatever it did, it did.
12 But there's no ongoing releases into the environment.

13 **THE COURT:** Tell me about these wells which are
14 20 or greater -- have PFAS at 20, how proximate are they to
15 the Tyco facility?

16 **MR. PETROSINELLI:** They're -- it's varying
17 lengths. It's a relatively, I would say -- I'm just ball
18 parking it, but most of them that are in that range, above
19 20 parts per trillion, are southeast of the facility,
20 which is right where part of plume goes. So you would
21 expect it to be. And, you know, maybe a half mile or so.
22 And so it's a very small number.

23 I don't know if I gave Your Honor the numbers.
24 But the number's over 20 parts per trillion, between 20
25 and 70, there's 13 homes. And over 70, there's 18 homes.

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1 And those are the folks who you really --

2 THE COURT: Give me those numbers again. I'm
3 sorry.

4 MR. PETROSINELLI: Between 20 and 70 parts per
5 trillion -- so actually between 20 and 69 parts per
6 trillion would be 13, and 70 and over is 18. And then,
7 remember, 140 are below the 20.

8 THE COURT: Yeah.

9 MR. PETROSINELLI: So that makes up the 171.

10 THE COURT: Well, you know, the company's trying
11 to limit its liability. It believes it's going to limit
12 the spread of the plume through this system, which I know
13 DNR praised the system. They thought it was pretty
14 imaginative. And you only have 31 homes right now and you
15 discontinued the testing in 2019. Then the company's
16 potential exposure -- I mean, if people say, well, I'm not
17 going to waive my latent claim, doesn't sound like the
18 company has a great deal of risk by telling people we're
19 willing to pay you X dollars for a release today. But if
20 you don't want it, it's your business -- that's your
21 business. Nobody -- I mean, practically speaking, I think
22 the potential exposure to the company for someone to
23 successfully sue you is pretty low.

24 MR. PETROSINELLI: Well, that he would be the
25 hope. I think that Your Honor's point is right, which is

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1 I think it's a shame if folks opt out from the settlement.
2 Because Your Honor's point about what lawyer is going to
3 take a case that -- where someone in a well has --

4 THE COURT: Well, let's look at that for a
5 second. If somebody had a claim a number of years from
6 now of a cancer that was metastasized and Stage 4 and they
7 were very ill, and they had a history of PFAS in their
8 wells, you and I both know y'all would be settling that
9 case, I mean, just practically speaking if a capable
10 lawyer did that. That could be a far in excess of the
11 2.5 million you've set aside. Nobody's arisen like that
12 to my knowledge, no claim like that has arisen and may
13 never arise.

14 But what worries me -- you know, in class action
15 settlements, one of the wraps is some people get
16 overcompensated and some people get under-compensated.
17 And in the end sort of justice is done, that's the theory.
18 It's kind of a compromise for efficiency. And I get that.

19 We just can't do that for personal injury
20 claims. That's my concern. We can't class personal
21 injury claims.

22 And it may well be that for the overwhelming
23 majority of people, no matter what their concern is right
24 now, the only money they would ever likely see is if they
25 accept this settlement. I mean, just realistically. But

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1 that's their choice. And do I have a right to take away
2 their -- and put them in a deal where they have to make a
3 Hobson's choice? Do I have to do that? Or is there a way
4 with these smart lawyers in this courtroom we can figure
5 out a smarter way that doesn't seem to have a shadow
6 class?

7 I think the end result is probably reasonable.
8 It's just it's done in a way in which it makes people give
9 up rights that I don't think I have a right to make them
10 give up. I don't think I should have a right to put them
11 in that position.

12 **MR. PETROSINELLI:** Your Honor, I've known you
13 long enough to know that when you have a concern about
14 something, I can try to talk you out of it. But I
15 think --

16 **THE COURT:** I want to talk you into working out
17 something that serves the interests of all the clients, of
18 everybody, and addresses some of these legitimate concerns
19 the good people of this area have. Because I think, on
20 balance, there's much good in this settlement proposal.
21 We've just got to figure out a way to do it that doesn't
22 take us afoul of basic rules about not classing personal
23 injury claims.

24 **MR. PETROSINELLI:** Well, I think one thing I
25 agree with you, Your Honor, about the following. These

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1 300 or so folks that have filed claims to participate in
2 this settlement, including almost all the folks who have
3 the high numbers in their wells, but certainly the people,
4 the vast majority who have zero in their wells, this is
5 their one and only chance to get compensated through a
6 class settlement. And it would be a shame if it didn't
7 happen I think.

8 **THE COURT:** Yeah, I think it's going to happen.
9 The question is how do you make it work in a way that
10 doesn't do this linkage? And it may well be that those
11 people with PFAS in their wells who say, okay, we're going
12 to let you join the property claim and the exposure claim,
13 whatever amount of money, \$15 million in those two funds,
14 that's the class, and the release would only be for that.
15 We would like to talk to you about paying you for your
16 risk of latent injury.

17 **MR. PETROSINELLI:** You could do it that way.

18 **THE COURT:** You could do it that way.

19 **MR. PETROSINELLI:** Yes.

20 **THE COURT:** And I suspect most people not linked
21 would make the conscious choice to do it. But linking
22 them is the problem. And then they have a separate
23 independent judgment that that is the right thing for them
24 to do and not making them having to balance one interest
25 off against another interest and effectively classing the

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1 PI claims.

2 It may well be that the company would pay the
3 same amount of money, the plaintiffs would recover the
4 same amount of money, all of that would be the same. It's
5 just how you structure it a way that you don't take away
6 the people's right to choose.

7 **MR. PETROSINELLI:** Your Honor, did you want me
8 to talk about the one other thing that has kind of been
9 brought up as a municipal water line? Did you want me to
10 talk about that or do you not want me to address that?

11 **THE COURT:** Yeah, let me say something about
12 that and I'm glad to hear more folks, if needed.

13 You know, on one hand the company makes the
14 point that this is not a lawsuit to establish municipal
15 water in the community and that there are policy choices
16 the community needs to make. Some favor and I understand
17 some don't favor the municipal connection. And if I
18 understand, Tyco is prepared to spend millions of dollars
19 to pipe the water there. Am I right about that?

20 **MR. PETROSINELLI:** Yes, Your Honor, the current
21 estimate is between 17 and \$22 million.

22 **THE COURT:** Yeah, I mean, they're willing to do
23 it. But then the folks would be part of the town,
24 apparently, the town with the water system. They'd have
25 to agree to be annexed. And then they would have a water

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1 bill, which they don't have a water bill now.

2 And that's a choice that Tyco -- you can't
3 burden Tyco when people say, well, you know, I don't want
4 that either. Well, okay, how does all that work? And,
5 you know, Tyco has said, you know, we're voluntarily,
6 though we're not bound to continue to provide bottled
7 water and/or filtering, which has a cost as well.

8 And I get it that part of the property
9 diminishment value is you're being compensated for that.
10 That is -- and if you want the municipal water, well, Tyco
11 will contribute to that. Those are reasonable choices.

12 It might well be that you might solve some of
13 these concerns by extending out, not voluntarily, but
14 agreeing to continue to provide bottled water and the
15 filtering in a way that's not voluntary, that you'll just
16 commit to doing it for some fixed period of time. But all
17 that is something that could be worked out.

18 But I don't think you can hold Tyco responsible
19 when it's offering to spend \$22 million for piping to say,
20 well, I don't want that. Well, some say I want it and
21 some say I don't. And you're kind of holding Tyco hostage
22 when it's actually a local concern independent of them.

23 There is a solution, a potential solution here
24 with the municipal water supply that's probably worthy of
25 consideration. But that's for the decision of the folks

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1 in this community and not for this Court to make.

2 And there's no lawsuit. Mr. Napoli could bring
3 these lawsuits all day. He can't make Tyco provide or not
4 provide the water from the municipal -- that's not the way
5 the court system works. It's damages. It's a damage
6 lawsuit. And they're seeking compensation for it.

7 I think I've articulated the views here. And I
8 think it's one of those issues I think that is a little
9 bit of a chasing a rabbit. It's not relevant to the case.
10 But people need to understand if I approve this
11 settlement, they -- when they get their property
12 diminishment payment, that is for their loss of whatever
13 damage arises from the contamination of their wells.
14 That's what they're being paid for. If it's not enough or
15 you want to bring another lawsuit, that's your business.
16 You're like the Bours, you opt out. But that's the
17 proposal.

18 And where I can imagine a personal injury claim
19 being brought if someone had a catastrophic injury
20 complication they claim is related, that is a conceivable
21 thing. It is almost inconceivable to me that someone
22 could marshal a lawsuit over their diminished property
23 value. I mean, the cost of litigation would exceed it.
24 That's why their proposal, the property proposal is
25 probably the only way in which compensation occurs.

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1 And, you know, some people could say I don't
2 think it's enough. I counseled a lot of clients who would
3 tell me that. And I would say, well, you might get zero.
4 You know, that's a lot more than zero. And you've got to
5 make a choice and you've got to live with your decision.
6 It's your call. Nobody can make you -- Mr. Napoli cannot
7 make you not opt out. You can opt out. That is a right.

8 So even if the parties get together and figure
9 out a little fix on this problem with the coupling, you're
10 still going to be back to this issue that the water --
11 there's no permanent solution to the water right now. The
12 lawsuit, there's a damage lawsuit that you've been offered
13 this money. You can take it or not take it, that would be
14 your call. You can opt out or not opt out.

15 Yes, sir?

16 **MR. WOOFER:** Your Honor, I wanted to address a
17 little bit the idea of coupling and the idea of the shadow
18 class to see if I can maybe explain in two different ways
19 I think the issues you're raising and you can correct me
20 if I've misunderstood.

21 With regard to the non-class personal injury
22 claims are twofold. One is is this proper for the Court
23 to do at all as a legal matter? And two, is it fair,
24 reasonable, and adequate to do so in the way that this
25 agreement does it?

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1 And I think what the response to the first
2 question of whether it's proper to do it at all, I do have
3 some authority that I would like to share with the Court
4 that suggests it is proper in a class settlement to
5 release a non-class claim, potentially even a claim that
6 could not be brought for a class. So I'll start with this
7 case, TBK Partners out of the Seventh Circuit. And that's
8 675 F.2d 456. And there the court said, To achieve a
9 comprehensive settlement, the court may permit the release
10 of a claim based on the identical factual predicate as
11 that underlying the claims in the settled class action
12 even though the claim was not presented and may not have
13 been presentable in the class action.

14 More recent --

15 **THE COURT:** Not presented? This one is
16 presented. This claim is presented in the case. It's not
17 one that you're saying I'm -- I just want to make sure
18 we're getting rid of all -- releasing all the claims.

19 What concerns me here is this is very much a
20 claim. And you're conditioning, conditioning the exercise
21 of your joining the class of not opting out of the class
22 to give up a claim you have already asserted. That is my
23 concern.

24 And, you know, you haven't been around me as
25 much as Mr. Petrosinelli has. I've thought pretty deeply

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1 about this. And it is a very practical concern. I spent
2 a lot of time going to MDL conferences and class meetings
3 with my colleagues. And this, I want you to know, this
4 issue is very central to our concerns, this issue of
5 jamming claims into people -- making them make choices
6 that are unrelated. You know, I'm just not comfortable
7 with it.

8 But I think it's fixable. I really -- I think
9 there's a way in which y'all -- if y'all spent not as much
10 time arguing with me about it and figuring a fix, I think
11 there's a really easy fix here. And I've already
12 suggested the path. You separate them and people can make
13 their own choices separate. And they may make the choice
14 that Mr. Petrosinelli says he thinks they'd probably make,
15 it might well be. And those who don't will probably never
16 get any recovery. I say that now, but I warn them, the
17 opt out people may never get recovery. But they may have
18 the comfort that if they have a catastrophic result, they
19 have a right here and that's worth not being compensated.
20 These are intelligent people. They make informed economic
21 personal decisions. And they should have a right to do
22 that.

23 **MR. NAPOLI:** Your Honor, if I may? We certainly
24 hear you. And we have a motto in our office to make our
25 clients money not law. Because most of our clients could

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1 care less if we change the law and they're really
2 interested in getting compensation.

3 And one of the things that I appreciate about
4 Mr. Petrosinelli that he's willing to have these
5 conversations early on, not at the courthouse steps where
6 we're waiting for a jury to be impaneled, but early on in
7 the process. And there are not many lawyers that would
8 make that commitment early on.

9 **THE COURT:** I want the folks who are listening
10 to this to understand. For some reason, I get dragged
11 into these national cases. I don't know why I've been so
12 honored. And I've been around really, really good
13 competent lawyers in complex litigation. The Department
14 of Justice asked me to do some. And I've done some in the
15 Multidistrict Litigation.

16 And the lawyers in this case are the best
17 lawyers on both sides that I've ever dealt with. And I
18 think the world of them. It doesn't mean we always agree
19 with each other. There will be times we don't. But they
20 have really been diligent on both sides. And they're
21 doing an excellent job representing their clients.

22 These are complicated issues. Some of them are
23 at the very frontiers of our knowledge of science and
24 medicine and the effects of chemicals, some of them -- the
25 Baurs called them forever chemicals, probably a fair

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1 description. How we deal with that, that's all real
2 important.

3 But I don't want people to say I'm going to opt
4 out because I think the plaintiff's -- the class lawyers
5 are a bunch of thieves. They are not a bunch of thieves.
6 They are actively working on this.

7 Tyco, obviously, is responsible for the PFAS in
8 the water system and is trying to fix -- find a way to fix
9 it. We can't turn the clock back. If we could, Tyco
10 would be at the front of the line trying to do that.

11 So how do we do justice here? And justice isn't
12 perfect. Justice is a balancing of interests. And in
13 some ways I say part of this is like the knobs on the
14 machine. You just want to get the knobs exactly right to
15 make it work to do justice. There's no perfect justice.
16 What the surgeons say, the enemy of the good is perfect.
17 We're going to try to do good here. So --

18 **MR. NAPOLI:** Your Honor, if I could? So I just
19 wanted to let you understand a little bit of the process.
20 And I appreciate and I certainly hear you and I know
21 Mr. Petrosinelli does, too. We, very early on, I and our
22 team in our office is now trying to identify cases where
23 we might have an opportunity one on one with a defendant
24 to try to put together a structure that eventually may be
25 utilized in other areas of the country. And this was a

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1 unique situation. And Mr. Petrosinelli was a partner in
2 that. And this conversation certainly came up in the
3 negotiations, this issue that you raise. And there was
4 argument and vigorous argument about whether or not to
5 include it within the release -- and I don't want to go
6 too far with negotiations -- whether or not to include
7 within the release this issue. And my concern is, and I
8 hope he continues to participate, is that there was give
9 and take on this issue.

10 **THE COURT:** Well, that's right. And I think
11 there are ways, imaginative ways in which you can work
12 around that by separating them and the parties accomplish
13 the very same objective. I just think the way you
14 structure it here is problematic. But I do think there
15 are ways to fix this. And I think you're on the right
16 track.

17 But as you say, we're in the middle of a
18 Multidistrict Litigation that covers almost every judicial
19 district in the country. And we want to get this first
20 settlement right. We want to fine tune it so it might be
21 a model in some ways to do other places. And we don't
22 want to get off on the wrong foot here. And so we -- I
23 think it invites a level of scrutiny and thought. And
24 those folks among your team who are questioning whether we
25 should couple them, tell them they were right. They were

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1 right. And then, you know, I've just got every confidence
2 that, you know, with the ground rules as we're talking
3 about them, this is fixable. I really believe this is
4 fixable. And we've just got to think it through. And
5 it's not -- it may not be Tyco's perfect solution but
6 perfect is the enemy of good.

7 Okay. Let me hear -- I want to hear.

8 **MR. NAPOLI:** Your Honor, just before --

9 **THE COURT:** Yes?

10 **MR. NAPOLI:** -- may I just raise a couple other
11 issues that may help with some of the future objections as
12 well?

13 **THE COURT:** Yes.

14 **MR. NAPOLI:** First, I just want to thank the
15 Bours for attending and putting forth their comments. As
16 they did indicate though they are former owners. And they
17 did indicate a couple issues that were some of the
18 objections so I'd just like to raise it. They indicated
19 that people outside of the class area were not included in
20 the settlement.

21 **THE COURT:** That's always going to be true.
22 It's always going to be true. I didn't interrupt them to
23 say that. But wherever you draw a line, there's someone
24 on the other side of that line. And that's just the way
25 it is. And there's always going to be that situation.

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1 And so, you know, I told you I think on many of these
2 concerns, I understand the folks' concerns. If you lived
3 on the other side of the line, you would feel that way,
4 too. But you've got to draw a line somewhere, and this is
5 where the line is drawn.

6 **MR. NAPOLI:** And so just as part of the process,
7 we did have engineers that we regularly employ. And I've
8 been doing groundwater cases for 25-plus years. So we
9 certainly understand a number of issues.

10 And first, when it comes to the town working
11 together to develop the drinking water, primary
12 jurisdiction lies with the DNR. And they're the ones who
13 issue the permits and allow this to happen, working
14 together with the town.

15 And then when it comes to the fish and the
16 wildlife, in those types of claims, those are natural
17 resource damage claims that are typically brought by the
18 state. And here, in the state of Wisconsin, I'm aware
19 that the AG's office is currently looking to investigate
20 to potentially bring those claims. But those would not be
21 claims --

22 **THE COURT:** And I have, by the way, a number of
23 states are in my case. And I don't know about water
24 districts. Do we have any Wisconsin water districts in
25 ours?

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1 **MR. NAPOLI:** We do, Your Honor, I believe. But
2 they certainly could bring a case and participate. This
3 is a situation not where the company is saying we will not
4 pay. They're saying we have put aside \$140 million to
5 deal with the problem. Please tell us what to do with the
6 money. And it's really an issue unique to Wisconsin
7 because I did dig very deep into this to understand it.
8 And Your Honor, you have the city of Marinette to the
9 north and the Town of Peshtigo to the south. And it's the
10 Town of Peshtigo that has the private wells that are
11 contaminated, while the city is the most probable best
12 option for providing the drinking water. Well, unique to
13 Wisconsin, once you bring drinking water, and we're
14 talking about appropriation states because we're in the
15 west, whenever you provide water in an appropriation in
16 Wisconsin to a town, you annex them as part of your tax --

17 **THE COURT:** Let me give you a little secret. In
18 South Carolina we do not have that rule. I represented
19 the City of Columbia. We conditioned if you got water
20 system, you got annexed. So it might not have been
21 mandatory, but that's the way it works.

22 **MR. NAPOLI:** And there's a situation going on
23 which it is not something -- we tried to deal with it
24 because there's no greater advocate than us on the
25 plaintiff's side to try to substantiate and move that

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1 forward. And, you know, they have their own political
2 issues.

3 **THE COURT:** They have legit -- I understand.
4 I've been in those debates representing the City of
5 Columbia. I've heard those debates and I know them. And
6 that's beyond, again, the scope of this settlement. We
7 just can't get to that.

8 Regardless of what the past -- Tyco did in the
9 past, you've got to say, their behavior going forward has
10 been commendable. And they're trying to do it. There's
11 no perfect way to do this.

12 And that's why I think we -- you know, what we
13 want to do is endeavor to find a path here that's fair to
14 the local folks and provides them some opportunity for
15 reasonable relief without having to sacrifice rights they
16 may have that shouldn't be part of the settlement.

17 Let me go if I could to Charles and Cindy Boyle.
18 Are the Boyles on line?

19 **MR. BOYLE:** Yes, Your Honor, we are.

20 **THE COURT:** Very good. And I'd be glad to hear
21 -- is that you, Mr. Boyle? Is that Charles Boyle?

22 **MR. BOYLE:** I am. You may call me Chuck,
23 please.

24 **THE COURT:** Thank you. Well, Chuck, I'd be glad
25 to hear from you on your concerns.

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1 **MR. BOYLE:** Okay. First of all, Your Honor, we
2 were originally represented by Mr. Bilott. And he would
3 not agree to do our objections, so then we reached out to
4 an attorney, Chris Nidel, who was denied admission to the
5 MDL by Senior MDL Law Clerk Blaise Barber I believe.

6 So I guess my objection speaks for itself. I'd
7 just like to make a few comments after listening to the
8 defense attorney and to Attorney Napoli. First of all,
9 when Mr. Baur testified regarding the onsite
10 contamination, I believe it's that 400 parts per trillion
11 in one hot spot -- 400,000 parts per trillion. And I
12 think Attorney Petrosinelli even said that this plume is
13 moving southeast, which I agree with him on that.

14 The fix that deals with the extraction wells, I
15 believe that extraction wells that the specific line to be
16 northeast of these sites. They've tried to regulate
17 (audio interference) contamination that's going into the
18 Bay of Green Bay that ultimately would be considered a
19 Clean Water Act violation.

20 The DNR in the area, which the Defendant Tyco,
21 Johnson Controls not just (audio interference) ability for
22 would reach the amount of contamination that exceeds 20
23 parts per trillion and 70 parts per trillion. (Audio
24 interference). So that's being investigated with (audio
25 interference). We had took a (audio interference) of our

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1 downspout that were filled with.

2 **THE CLERK:** Mr. Boyle?

3 **MR. BOYLE:** Yes, ma'am?

4 **THE CLERK:** Would you slow down and speak more
5 clearly. We're having a hard time hearing you.

6 **THE COURT:** Please continue, sir.

7 **MR. BOYLE:** Can you hear me?

8 **THE COURT:** Yes. We're having trouble -- just
9 the transmission was weak.

10 **MR. BOYLE:** Okay. Can you hear me better now?

11 **THE COURT:** Yes, sir.

12 **MR. BOYLE:** Okay. I also have (audio
13 interference) Attorney Petrosinelli said they were no
14 longer doing any AFFF testing. That is not correct. I
15 have a correspondence memorandum from the State of
16 Wisconsin dated (audio interference) where the employees
17 from the -- (audio interference)

18 **THE COURT REPORTER:** He's breaking up. I'm not
19 getting it.

20 **THE COURT:** Sir, we're continuing to have -- are
21 you on a speakerphone?

22 **MR. BOYLE:** I am, sir.

23 **THE COURT:** Yeah. I think you need to -- we're
24 just really having trouble hearing you. It's just coming
25 off as sort of a muddle. Could you just pick up a regular

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1 phone? I think it might be better.

2 MR. BOYLE: I am -- how does this sound?

3 Better?

4 THE COURT: Yes.

5 MR. BOYLE: Okay. Sorry about that. So I have
6 a correspondence memorandum from the State of Wisconsin
7 that is from Randy Maddy (phonetic) (audio interference)
8 who confirms that the (audio interference) product is
9 (audio interference) AFFF.

10 THE COURT: Sir, my court reporter is having
11 trouble hearing you and you're breaking up. I'm just
12 trying to get a grapple of what the issue is. Are you on
13 a cell phone?

14 MR. BOYLE: I am, Your Honor. I don't have a
15 land line at this location.

16 THE COURT: Yeah, join the crowd.

17 MR. BOYLE: Can you hear me better now?

18 THE COURT: If -- it's a combination of things.
19 Number one, you're speaking awfully fast. And secondly,
20 it's breaking up on us. So we're only hearing like two
21 out of every three words.

22 MR. BOYLE: Okay. I will slow down.

23 THE COURT: I want to hear what you've got to
24 say so, you know, it's important that we -- and I have --
25 by the way, Mr. Boyle, I have read Mr. Nidel's filings,

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1 objections on your behalf. I have read that with a
2 considerable amount of care.

3 **MR. BOYLE:** Thank you. So I think the comment I
4 was trying to make responding to Mr. Petrosinelli stating
5 that they no longer test AFFF, they still test AFFF
6 indoors without any covers or anything like that (audio
7 interference) contamination from the air emissions.

8 I would really ask that if you decide to go
9 forward on this that you give us more time, 90 days or so.
10 And Attorney Napoli mentioned between Michael London, this
11 is the first I've heard that Michael London is working on
12 this with him.

13 I think you heard me when I said that Attorney
14 Bilott would not help with objections. Are you still able
15 to hear me, Your Honor?

16 **THE COURT:** I'm hearing you, yes. You know, it
17 would be more helpful, if you've got specific objections
18 to the settlement, rather than to the attorneys, that
19 might be helpful.

20 **MR. BOYLE:** I can wrap up, Your Honor.

21 **THE COURT:** Thank you.

22 **MR. BOYLE:** I would hope that we could move
23 forward and do a bellwether test file on this and see what
24 it would yield. My wife -- (audio interference)

25 **THE COURT REPORTER:** I think he said his wife

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1 wants to speak.

2 THE COURT: His wife wants to speak? Okay.

3 MR. BOYLE: Yes. (Audio interference) I'm
4 going to mute mine, Your Honor.

5 MS. BOYLE: Your Honor, this is Cindy Boyle.
6 Can you hear me?

7 THE COURT: Yes, ma'am, I can hear you just
8 fine.

9 MS. BOYLE: All right. One moment please. I'm
10 going to ask my husband to actually hang up. It will help
11 my connection further. All right. Can you hear me all
12 right?

13 THE COURT: Yes, ma'am.

14 MS. BOYLE: Okay. First of all, thank you, Your
15 Honor, for taking (audio interference) on behalf of the
16 class who are most impacted. Thank you very much. We
17 have spent considerable time in (audio interference) to my
18 objections which led with the need to decouple the
19 personal injury and property damage component. Your
20 reference to the lack of choice says it all. And that's
21 exactly what so many class members have been struggling
22 with. I understand that the defendant would like very
23 much to keep those things joined. But the public has
24 shown that to be their greatest hurdle. It's just too big
25 of a gamble. And I think you understand that perfectly

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1 well.

2 THE COURT: Ms. Boyle, let me ask you this
3 question. If those issues were separated, and you could
4 file -- you and your husband could file a property claim
5 and exposure claim without affecting your right to later
6 pursue a latent injury claim, would you file a damage
7 claim?

8 MS. BOYLE: Yes.

9 THE COURT: Okay.

10 MS. BOYLE: I think that it's helps our decision
11 making immensely. We have -- I put you on speaker so I
12 hope you can still hear me well?

13 THE COURT: Yes.

14 MS. BOYLE: Thank you. We have a unique story.
15 And I'll be honest, I would say that it increases our
16 likelihood significantly, yes. We happen to have a
17 property that just last summer we had our realtor come out
18 and give us an assessment of its value and it was at
19 \$2 million. We have a very unique waterfront property
20 with a considerable amount of waterfront, three plots
21 which are undeveloped.

22 My further concern regarding the demunition of
23 property value is that it does not include properties that
24 do not have wells. And so, in other words, you have
25 undeveloped properties. And if we are to believe the EPA

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1 and Attorney Napoli who have all stated that they
2 anticipate PFOA and PFOS will likely be considered (audio
3 interference) in the summer of 2022. Any potential
4 development on our properties would be at our expense of
5 removal of (audio interference)

6 **THE COURT REPORTER:** I can't hear her.

7 **THE COURT:** Just keep going.

8 **MS. BOYLE:** -- which we know the ground is
9 filled with (audio interference). And the settlement
10 (audio interference) I don't have on the town. That also
11 would apply a significant amount of property if a rural
12 community that's not unusual using it for farmland or
13 large (audio interference) and 20, 40 or more acres around
14 here. So I think an argument can be made that I'm having
15 considerations for properties that don't have wells is
16 something that I would very much like that to be
17 re-evaluated, if at all possible. But that being said, I
18 think that we would be much more inclined to consider it.
19 We would not consider it if it is not decoupled. It's
20 absolutely too far great a gamble. Knowing (audio
21 interference) our properties combined over 60 parts per
22 trillion, (audio interference) me and my husband have
23 (audio interference), et cetera.

24 **THE COURT:** Okay.

25 **MS. BOYLE:** May I continue with respect to the

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1 water line exception?

2 THE COURT REPORTER: She said may I continue
3 with respect to the water line exception?

4 THE COURT: Yes. You're breaking up. You're
5 starting to break up on me. My court reporter is
6 struggling to get the full impact. So if you could
7 speak -- make sure you're speaking loudly and into your
8 telephone, that would be helpful.

9 MS. BOYLE: I will. Thank you. And I will
10 speak slower.

11 One final remark regarding the decoupling of
12 personal injury and property damage, you know, I would
13 agree with Chuck that we really need far more time than
14 seven days to make that determination. I would like for
15 you to consider (audio interference) so that we could
16 determine whether or not we could even get representation.
17 I just think seven days is --

18 THE COURT: Ms. Boyle, how many days would you
19 think would be reasonable?

20 MS. BOYLE: Ninety.

21 THE COURT: Ninety?

22 MS. BOYLE: Yes.

23 THE COURT: Okay. Anything further?

24 MS. BOYLE: Yes. Thank you. The last thing I
25 want to really touch on is -- and you've been very

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1 articulate. And I understand the points you've made
2 regarding this settlement being separate from the
3 permanent water supply. Because as I understand it, your
4 argument is that the demunition of property value payout
5 takes that into consideration.

6 The part I find difficult to understand is that
7 the class boundary has been identified. And I'm sure
8 you're well aware of what that is. But JCI, the
9 defendant, is publicly in writing only promising permanent
10 safe drinking water provided to less than half of the
11 boundary. In order to fully restore property value and
12 have confidence in wells is something we need most is
13 permanent safe drinking water not at our (audio
14 interference). And my fear is that the settlement (audio
15 interference) and JCI is released from all class members,
16 they will simply say our burden of responsibility has been
17 met by (audio interference) and you all are on your own
18 now for getting permanent safe water. (Audio
19 interference)

20 THE COURT: Okay. Well, thank you very much,
21 Ms. Boyle.

22 MS. BOYLE: Thank you very much, Your Honor.

23 THE COURT: Very good.

24 I'm now going to call on Ms. Kayla Furton. Are
25 you on the line?

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1 MS. FURTON: Yes. Can you hear me?

2 THE COURT: Yes, ma'am.

3 MS. FURTON: Great. I want to thank you so very
4 much for your time and attention to detail to this case
5 which is evidenced by your questions and comments (audio
6 interference).

7 I am a former resident of the settlement area of
8 the contamination. I am also a current resident and
9 homeowner in the settlement area of contamination. I am
10 also a parent of three young children living in the
11 settlement area from the contamination. So I have a few
12 points of objections that I'd like to highlight in the
13 letter that I sent the Court.

14 One is a clarification. Prior to February of
15 this year, our home was one of the 81 percent that counsel
16 had referenced as being under. However, in February of
17 this year our well amount was over 60 parts per trillion
18 combined. With that information -- and also we are about
19 three and a half or four miles from the Fire Technology
20 Center, certainly not within that half mile radius that
21 was referenced earlier. I could not get concrete
22 information regarding which results would be utilized to
23 determine our settlement amount. However, I did receive
24 multiple communications regarding how to withdraw my
25 objections. And I do not believe it is fair for

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1 individuals who are not lawyers or engineers to not have
2 proper counsel in making decisions (audio interference).
3 I've read the settlement multiple times. I am a teacher.
4 I'm not a lawyer.

5 Another point I'd like to address is about the
6 PFAS system which Tyco JCI is putting forward with the
7 (audio interference) and addresses contamination heading
8 towards Michigan. But it does not address contamination
9 in the ground (audio interference). And I bring that up
10 as a point that was raised today.

11 Another objection that I would like to bring
12 after some of what Cindy Boyle shared, I am on the Town of
13 Peshtigo Board. I am well aware that the water (audio
14 interference) long-term safe water action is outside of
15 this settlement. However, I'm left with (audio
16 interference) which frequently changed which I feel like
17 is not fair to residents. And it also is not (audio
18 interference) a settlement (audio interference). It
19 included this quote. It is very important to know that
20 all class members will be releasing their rights to
21 defendants who obtain an alternative water source even if
22 the class member does not make a claim under the
23 settlement. So while counsel continues to state that it
24 is completely separate, I do understand residents' desire
25 to maintain a legal option to obtain long-term drinking

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1 water especially considering that Tyco has not commented
2 and is not providing water to over half of the settlement
3 here.

4 I do want to (audio interference). I absolutely
5 echo your concerns about property and personal injury
6 links. I do believe that they should be separated. A
7 major concern I have for the personal injury, which
8 according to my understanding I would well support, is the
9 need to completely release my entire medical history
10 rather than just that pertaining to the claim. And there
11 is no mention of who would have access to that information
12 along with my social security number. So I do not feel it
13 is fair for me to release all of my information without
14 any reassurance of security of that information.

15 **THE COURT:** Very good. Okay. Anything further,
16 Ms. Furton?

17 **MS. FURTON:** Um, I could go on all day. So I
18 very much appreciate your time.

19 **THE COURT:** Okay.

20 **MS. FURTON:** I would also like to request an
21 extension time period for individuals to make a decision
22 after your ruling. It does take a significant amount of
23 time to try to process, gather, and obtain any necessary
24 additional information to make the decision that would be
25 best for our family. So an extension of time is greatly

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1 needed.

2 **THE COURT:** Thank you very much.

3 I'm now going to turn to -- is Mr. Brett
4 Kowalski on the line?

5 (There was no response.)

6 **THE COURT:** Okay. Then I had an indication that
7 Ms. Pamela Goes and Ms. Patricia Kotecki wish to speak.

8 **MS. GOES:** I am Pam. Hi. Can you hear me?

9 **THE COURT:** Yes. If you could speak up just a
10 little bit, please, ma'am.

11 **MS. GOES:** Yes, I am Pamela Goes.

12 **THE COURT:** Yes, ma'am.

13 **MS. GOES:** My mom is Patricia Kotecki. She is
14 unable to be with us today. My parents own property in
15 the plume area that is (audio interference). So I speak
16 for myself, grew up there, as well for my parents who are
17 still in the upstate and (audio interference) objections
18 with them. Thank you, Judge, for hearing our concerns.
19 I'm just going to speak from the heart.

20 At this point that separation for personal
21 injury claims needs to be separate. You cannot (audio
22 interference) by coupling it together. I think as a
23 cancer survivor I think that no amount of money could
24 restore my health. But for those coming behind me, for
25 the young children that are being raised in these homes,

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1 this needs to be separated out.

2 It is vital that clean water be given to these
3 people at no cost. I understand your position in regards
4 to the information you gave us (audio interference) in
5 clean water. However, when you're talking about property
6 damage, without clean water being incorporated in there,
7 it's really no choice. You can't (audio interference).
8 Who wants that property that you can't drink water on?
9 It's that simple.

10 I understand that (audio interference). Tyco
11 may, Tyco should. It doesn't say Tyco will provide clean
12 drinking water. It says (audio interference) Tyco would
13 provide bottled water. It doesn't say Tyco will service
14 point systems that are in people's homes. That's the
15 number one concern along with the personal injury.

16 I would also ask the Court to please grant a
17 minimum of 90 days. This took years for this damage to
18 occur. It also took years for us to get a handle on it of
19 what it actually means. I don't think any of the
20 timelines that (audio interference) to diagnose this to
21 take into account (audio interference) the comments that
22 you made in regard to the amount of time the (audio
23 interference) of the lawyers involved.

24 I speak from the heart. I ask you to please
25 (audio interference) with all of that.

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1 **THE COURT:** Thank you very much.

2 Okay. Well, those are the individuals who have
3 given us notice of wanting to be heard.

4 Mr. Napoli, anything you wish to add?

5 **MR. NAPOLI:** Your Honor, I would. I think it's
6 important for the Court to hear the breadth of the notice.
7 It would take a couple of minutes. The notice
8 administrator is on, Mr. Garretson, and Kristen Davis.
9 I've heard the statistics and I think the reason -- one of
10 the reasons why we've had a fulsome day today with
11 objectors is because of the breadth of the notice. If you
12 would indulge Mr. Garretson --

13 **THE COURT:** When you're saying the breadth of
14 the notice, what are you telling me? I mean, I've read
15 the notice. And I've read what y'all have done. What
16 else do you wish to add?

17 **MR. NAPOLI:** I would just like to have
18 Mr. Garretson tell you how many people it's reached --

19 **THE COURT:** Sure. Sure.

20 **MR. NAPOLI:** -- if we could. And I know him and
21 Kristen Davis are on the line.

22 **THE COURT:** Let me just say this to folks who
23 are listening. This proposed class is not a group you
24 could readily just say I can go to a ready source and have
25 addresses. Some people formally resided in the community.

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1 Some were non-owners. Some were residents. Some were
2 leasers. So the idea that we're simply going to mail to a
3 class is not realistic.

4 And I know that the parties, in an effort to
5 provide notice, elected to use not just mailing but social
6 media and community meetings and other methods, ads in the
7 local newspaper, et cetera. And there's going to be no
8 perfect way to do this. There just isn't because of a
9 variety of people who are covered by the class and the
10 lack of an easy list to simply drop a mailing to. If they
11 had that, I know that it wouldn't be as challenging as it
12 is now. So I wanted to lay that background that this
13 was -- there was always going to be an imperfect method
14 simply because of the nature of the class.

15 Now, Mr. Napoli, you can go from there.

16 **MR. NAPOLI:** Okay. Mr. Garretson and Ms. Davis
17 are on the Zoom, Your Honor.

18 **THE COURT:** Yes.

19 **MR. NAPOLI:** Mr. Garretson, if you could
20 comment?

21 **MR. GARRETSON:** Sure. Thank you, Your Honor.
22 It's Matt Garretson. I'm the cofounder of Signal
23 Interactive Media which is the court-appointed class
24 notice agent. And with me today is my colleague, Kristen
25 Davis. And I asked her to speak to the Court here today

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1 with me because one of the unique things that this
2 settlement's had, compared to other settlements in which
3 we've recently done notices, the high level of engagement
4 with social media and with the digital component. And
5 because the Court allowed us to use the digital
6 components, I thought it would be good to report to the
7 Court on the success of that.

8 **THE COURT:** Mr. Garretson, am I correct that
9 when you have a class that's not -- that sort of covers an
10 extended period of time and people residing in an area,
11 not just owners, that that's a particular challenge for
12 you as someone responsible for getting notice out?

13 **MR. GARRETSON:** Yes. And so the idea then
14 becomes how do we get people to share the message and
15 communicate to former neighbors and loved ones and family
16 members that may be former owners and to go back in time
17 so broadly as we've had to reach those people.

18 And so, Your Honor's correct. We did do
19 individual direct notice to 600-plus households. And we
20 did run 375 radio advertisements and a series of print
21 advertisements. But often those are geographically
22 confined.

23 So the digital notice has really become the way
24 in which we get engagement with class members who are no
25 longer present in a class area or may not any longer be

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1 present. So I don't want to waste the Court's time
2 talking about things that the Court would know about the
3 direct notice. So without further ado, what I'd like
4 Kristen to do is share with the Court the way in which we
5 saw real peaks in the digital notice and social notice
6 campaigns.

7 **THE COURT:** That would be great.

8 **MS. DAVIS:** Thank you, Matt.

9 Hello, everyone. My name is Kristen Davis and
10 I'm a key member of the team at Signal. And I executed
11 the digital campaign that we're going to talk about
12 briefly now. Simply because we didn't know exactly who
13 all the putative class members were, and where they might
14 be, and they cycle a large date-age range, we used a lot
15 of different types of platforms to try to reach people.

16 They included social media, which includes
17 Facebook and Instagram; Display, which essentially means
18 internal web scanner advertisements that you could see
19 anywhere that class members would be on the web, either
20 kind of along the side or above the top of web pages.

21 Then we also did search campaigns on Google
22 Search and Yahoo so that (audio interference) had to do
23 with the class action such as (audio interference)
24 settlements or fire fighting foam lawsuits would then have
25 a link directly to the settlement website.

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1 So, essentially, we put out advertisements
2 linking directly to the settlement website on all these
3 platforms. And to date, they've been seen 1.7 million
4 times. And more interesting than the number of times
5 they've been seen is the number of unique individuals who
6 have actually seen them. So we have reached over 60,000
7 unique individuals with these ads and over 175,000 unique
8 devices with some who saw the ads on their mobile phone
9 and saw the ads again on their home computer or perhaps on
10 their tablet.

11 Among these people, more than 7,000 connected to
12 the website. Some connected to the website more than
13 once. And then beyond that, more than 80 people filed
14 claims after directly seeing these ads online and then
15 going into the online claims (audio interference).

16 I think that beyond the success, what's really
17 interesting is the engagement that Matt mentioned. And we
18 particularly saw this on Facebook and Instagram where more
19 than 200 people reacted to the ads directly. So that
20 means they liked them, they expressed anger, or they
21 expressed surprise in response to seeing them.

22 We had people, approximately 200 people also
23 share the notice on their Facebook network. And what this
24 means is that person sees our ad and then they click a
25 button to actually place the ad on their own timeline.

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1 And this allows anyone who is friends with that person to
2 see that ad as well.

3 We have dozens and dozens of claimants write
4 comments on the ads. These really ran the gamut. The
5 comments were pretty (audio interference) especially
6 around the time of the community meetings where we saw
7 people were sharing information about the meeting and
8 discussing the (audio interference) in the settlement,
9 like water level testing. We also saw people commenting
10 by tagging their friends on the ads which would
11 essentially provide notification to other people as the
12 notice was relevant to them.

13 And then, lastly, we had dozens and dozens of
14 people save the post on Facebook. And this is significant
15 because when you're scrolling through Facebook and seeing
16 advertisements and such, they will disappear off your feed
17 as you continue to scroll and you won't be able to access
18 them when you reopen the application. But saving the post
19 essentially puts it into a file on your personal Facebook
20 page that you can go back to at any time.

21 So I think the purpose of all of this is to say
22 that we're pleased to see that we reached the right
23 targets and that people were engaged with the message.
24 They were engaged with the settlement content. And they
25 wanted to spread the content around with the people in

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1 their communities.

2 **THE COURT:** Well, thank you very much. Welcome
3 to the new world, huh? How you communicate with people,
4 particularly people who may not reside in the community
5 anymore but who have potential claims. So thank you very
6 much for that explanation.

7 **MR. NAPOLI:** And Your Honor, just to add to what
8 the notice claims administrator has indicated, we as
9 counsel also held a town hall meeting virtually.
10 Certainly, we would have done it in person had it not been
11 for COVID. It was very well attended. It was also
12 attended by --

13 **THE COURT:** How many people attended,
14 Mr. Napoli?

15 **MR. NAPOLI:** There were over 80, if I recall
16 correctly, 80. And a large number of people aggregated in
17 an individual home. So it was likely a lot more than that
18 because I've spoken to a number myself of class members
19 who said they were going to have like a tea or something
20 and have everybody listen and ask questions. We answered
21 questions.

22 Mr. Garretson participated. And the claims
23 administrator, Mr. Cohen, also participated. We talked
24 about it. One of the objectors talked about the class
25 website changing. That was by design. As we got

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1 questions that we identified the people wanted answers to,
2 we came up with the answers. We shared some of the
3 answers that dealt with the settlement agreement with the
4 defendants for their input to understand to make sure we
5 were on the same page understanding. And so we did put a
6 lot of effort into notice in the class.

7 **THE COURT:** Let me say this. The people who
8 have spoken here today were very well informed. They had
9 to learn that information from somewhere. And they,
10 obviously, read the settlement agreement. They listened
11 and participated in various programs and perhaps gathered
12 information on -- from social media sites. Whatever.
13 These are not uninformed people. And they have to make
14 their own intelligent choices about what they want to do.

15 I think y'all have done a very good job on
16 notice. I just think -- when I first saw this, I said to
17 my staff, I said this is going to be really challenging
18 trying to communicate. And, you know, I notice that they
19 had to get a young woman who grew up in all this to do the
20 social immediate. You know, the old guys were saying,
21 well, let Ms. Davis do the talking. I get that. That's
22 what I would do.

23 And, you know, it's -- it is challenging because
24 a number of potential claimants probably don't even live
25 in Wisconsin anymore. So how do you reach them? How do

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1 you find them? These are fair questions.

2 But I've got to tell you, folks, I've now
3 listened to folks and read these objections. A lot of
4 them circle back to this issue I raised right at the
5 beginning here. I think people -- you know, the folks who
6 said I have a million-dollar property and may be damaged,
7 that's a kind of unique situation. That's not typical for
8 this case. And they may say I'm going to opt out and hire
9 a lawyer and litigate. That's their business. Okay? But
10 that's not the typical claim here. The typical claim is
11 the wells. I mean, that's what our claims are about,
12 contaminated wells.

13 So, you know, we can't -- the settlement can't
14 do everything. It can't cover areas not -- it cannot
15 cover claims outside the area. It cannot cover potential
16 contamination that's not with the wells. It is what it
17 is. And it's got its strength and it's got its
18 weaknesses.

19 And the question I've got to ask is in the end
20 can we fashion a remedy here which is fair and reasonable
21 and reliable, and one in which our claims administrator
22 can actually administer? That's what we've got to do
23 here.

24 **MR. NAPOLI:** I wanted to address also one of the
25 other issues one of the objectors raised about security of

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1 personal information.

2 THE COURT: Yes.

3 MR. NAPOLI: Because these days that's very
4 important. And I want the Court know that we've hired,
5 along with the settlement administrator and the notice
6 administrator, we're hired a company, Epiq, that typically
7 handles processing these types of claims. And I know from
8 my experience with them that they have all the badges and
9 certifications with HIPAA compliance and security
10 compliance. And so we will update the website to let
11 class members know of their --

12 THE COURT: Mr. Napoli, let me ask you about the
13 notice period. What worries me is seven days may be too
14 short. We don't need 90 days but maybe a little more
15 time. I'm just worried about, if at some point I approve
16 the settlement, I want to make sure people have a chance
17 to get the information and respond to it. And we just
18 need to think about, you know, what might make more sense
19 than seven days. Seven is just a little tight.

20 MR. NAPOLI: Sure.

21 THE COURT: But again, you know, I don't know,
22 30 maybe might be enough -- might be enough time? Maybe
23 that's too long. I don't know. I just want to raise this
24 with you. I thought they had a point about the seven
25 days. I'm just worried that by the time people learned of

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1 it, they wouldn't have time to fairly evaluate it.

2 So I've got to say, people are very well
3 informed here. But they need a little time to -- whatever
4 this Court finds -- if the Court approves the settlement,
5 it's not going to be exactly what we're doing right now,
6 it's going to be somewhat different. And we're just going
7 to need to make sure that people understand it.

8 **MR. NAPOLI:** Well, Your Honor, there's always a
9 balance with, you know, trying to get money -- because one
10 of the big other questions, how soon will we be paid? And
11 so we are always concerned with that.

12 **THE COURT:** We've got to balance those, there's
13 no question about it.

14 **MR. NAPOLI:** Find a balance. And I have heard
15 from a number of objectors that, you know, I didn't opt
16 out. You know, this is a forum for them. They've,
17 obviously, gone through a lot of trauma in their
18 community, which I certainly appreciate having, you know,
19 issues with their water, you know, in their homes. So
20 that certainly concerns me a lot.

21 **THE COURT:** But you may have fewer opt outs --
22 you may have people not wanting to opt out if we change it
23 because a lot of them had the concern about the coupling.
24 You may have more people buy in -- into the settlement
25 than you would otherwise.

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1 In the end, you're never going to have a
2 situation where everybody's pleased. Right? It's just
3 not possible. But what we're trying to do is get a
4 measure of fairness here. And I think y'all have done a
5 great job and it's a good start. I guess y'all wanted it
6 finished today. It's not going to quite happen that way.
7 But I think we're on a good path here. I think in the
8 end, you know, I feel like we can get there. And then at
9 that point, once I feel comfortable that the parameters of
10 the settlement -- the parameters are fair and reasonable
11 and adequate, then people can make their own choices if
12 they believe that. If they don't, they can opt out.

13 **MR. NAPOLI:** Your Honor, may have we take a
14 break just for five minutes just to talk a little bit
15 about what we think is --

16 **THE COURT:** Let me do this. I want my two
17 leaders to come to my chambers if you would. And I want
18 to chat with you a bit about how we might move forward
19 here. So y'all want to confer a minute and in about five
20 minutes one of my court security people will bring you up.
21 How about that?

22 **MR. NAPOLI:** That would be great. And are we
23 going to keep the people on the phone and come back --

24 **THE COURT:** No, we're going to adjourn this
25 hearing and I'm going to take the matter under advisement.

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MR. NAPOLI: Okay.

MR. PETROSINELLI: That sounds good to me, Your Honor.

THE COURT: Very good. Thank you very much.

So with that, this hearing is adjourned.

(WHEREUPON, court was adjourned at 12:01 p.m.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Karen E. Martin

6/11/2021

Karen E. Martin, RMR, CRR

Date

Karen E. Martin, RMR, CRR

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